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Current Topics.

Mr. Justice Langton.

THE news of the untimely death of Mr. Justice LANGTON last week came as a shock to those who knew him, whether as a judge or as a friend. There were many respects in which his life had become distinguished, and there was every reason why he should have looked forward to even greater distinction. He was born on 22nd April, 1881, and was educated at Beaumont and New College, Oxford. In 1905 he was called to the Bar and, having read in Admiralty and Commercial Chambers, he soon distinguished himself in that class of work. When war broke out in 1914 he took a commission in the Royal Garrison Artillery, and was later transferred to War Office Intelligence. In 1916 he became Director of Labour Department and Commissioner for Labour Disputes at the Ministry of Munitions, and in 1918-1919 he was Controller of the Demobilisation Department at the Ministry of Labour. In 1930 he was made a judge of the Probate, Divorce and Admiralty Division, and it is worthy of note that he was the only judge of the Roman Catholic persuasion ever to be a judge of the Divorce Court. It says much for his high sense of duty that he accepted the position only after taking high ecclesiastical advice. For a long time he was a member of the Comité Maritime International, and he also filled the offices of Vice-President of the Council of Legal Education and Chairman of the Board of Studies. He was a brilliant lawyer and a great judge in other fields besides that which he had made peculiarly his own. Many students of case law will remember his incisive judgment in the *Azkarai Mendi* [1938] P. 263, on the subject of damages for the loss of expectation of life, a subject which he re-examined and elaborated in a profound and scholarly article on the law of compensation in this year's January issue of the *Law Quarterly Review*. The bench and the legal profession have suffered an irreparable loss.

Free Legal Assistance.

CONFIRMATION of the need for a more extensive provision of legal assistance than that at present envisaged by the Army scheme announced on 14th July (*ante*, p. 205) comes from the poor man's lawyer centre at the Cambridge University Settlement. In a letter to this Journal enclosing a memorandum on the subject, it is pointed out that while the provision which is being made by the Army is a welcome one, it will place a further burden on the existing machinery for the representation of poor persons. The letter states that the point made in the "Current Topics" about representation in the county court is all the more important in the case of a soldier, who will frequently have to take proceedings in the county court of a different district. This fact of the soldier being in a different place from the other parties and the cause of the trouble, also makes it desirable that there should be the closest co-operation between all the organisations which can assist, and the first step would appear to be that a list of Army and other free legal advice centres should be compiled. From the experience of Cambridge House, continued the writer, it seemed inevitable that the Army legal advice centres would immediately be confronted with the need of making some further provision for representation. Some of the points made in the memorandum deserve the close and immediate attention of the authorities. Legal advice, it is said, is frequently useless unless it can be supported by legal proceedings. In the county court there is no statutory provision whatever for legal representation. In London the Bentham Committee, and in some provincial towns associations of poor man's lawyers have formed a rota of solicitors who are willing to take cases in the county court following the poor persons procedure of the High Court. In special cases assistance may be available from a trade union or approved society. The question of how little money a man must

have to entitle him to free legal advice is acute, and the writer criticised the limit of income and capital in the High Court on the ground that it excluded a large number of border-line cases, penalised saving and encouraged touting and speculative assistance to litigants. By way of constructive suggestion the memorandum proposes that free legal representation should be available without special circumstances up to at least £4 after compulsory deductions, and that this should apply to the county court as well as the High Court. Between £4 and £6 there should be provision for representation at reduced fees in necessary cases. Dealing with the criticism as to the shortage of solicitors and barristers, the memorandum states that funds would have to be provided by the Government so that the present short supply of lawyers should not be monopolised by those who can afford to pay them. To deprive a man of the means to enforce his rights was the same thing as to deprive him of his rights, and there is a spirit now which will not tolerate gross inequality. The financial hardships of poor people arising from the war had been recognised in many ways, but in the realm of legal assistance the present low level has been maintained. These recommendations deserve serious consideration as they emanate from practical experience. Thoughtful persons everywhere are beginning to regard those rights, as theoretical and imaginary which are in fact out of the reach of large masses of the people, and inquiry should be made as soon as possible into the immediate practicability of such schemes of public legal assistance as are recommended by the Haldane Society, Cambridge House, and other bodies with practical experience of the problems involved.

The American (Visiting Forces) Act.

IN the course of the recent debate on the American (Visiting Forces) Bill in the Commons, a certain amount of criticism was directed at what seemed to be the unusual haste with which it was decided to take the measure through all its stages. The reasonable and proper answer that was given on the part of the Government was that it was a matter of great urgency. Some apprehension was also felt and expressed that the American military law might not afford the same measure of protection to those who might be victimised by crimes committed, admittedly in exceptional cases, by members of the visiting forces. Reassurance was given on this point also, but the fact that criticism was forthcoming, according to a statement by a distinguished American journalist, Mr. RAYMOND GRAM SWING, had a very unfavourable effect on opinion in the United States. Professor ARTHUR GOODHART, who is a member of both the American and English Bars, wrote to *The Times* of 11th August in explanation of the American feeling on this subject. He stated that it was not true, as suggested in the course of the debate, that the American request that offences by members of their armed forces should be tried by American military tribunals was due to a mistrust of British justice. On the contrary, Americans had an almost exaggerated belief in the fairness of British courts. The maintenance of discipline, however, in so large a force stationed in a foreign country was a serious matter, and it was hardly surprising that the American Government should have taken the view that divided responsibility on this point was undesirable. The English penalty for rape was less drastic than that provided by Art. 92 of the American Articles of War, and in the case of minor offences an English court could only punish the offence itself, while an American military court would be able to deal with it more firmly under the head of "conduct prejudicial to good discipline." The matter was one of responsibility and not of privilege. Moreover, while in Great Britain the civil courts continue to try members of the armed forces for criminal offences even during war-time, Art. 74 of the American Articles of War requires the military authorities to hand over any accused person to the civil authorities "except in time of war." The object of this provision was to give the army in time of war full control

of its members, in the interests of great efficiency, and it was therefore not true to say that the passing of the Bill would put the American soldier in any different position to that which he had in his own country. A similar right was given to the British Army and the American Army in France in the last war. From Professor GOODHART's experience of American courts martial at that time he believed that the French people were satisfied with the way in which they functioned, in spite of the difference in language and procedure. Now that the measure has passed into law it is clear that such criticism as was forthcoming was due to a somewhat natural misunderstanding, and Professor GOODHART is to be congratulated on the service which he has rendered to Anglo-American relations in removing the cause of the misunderstanding.

The Courts Martial.

AN explanation of the working of American courts martial in this country was published on 10th August by the United States Army Headquarters in the European Theatre of Operations. The administration of military justice will be supervised by a branch of the Judge Advocate General's Department under Brigadier-General LAWRENCE H. HEDRICK, Assistant Judge Advocate General of the Army. The maximum punishments imposed by the American military law are generally more severe, it is stated, than those imposed by the American civil courts. A general courts martial consists of no fewer than five officers, and deals with cases involving punishments of from six months' imprisonment to the death sentence. Special courts martial consist of no fewer than three officers, and deal with cases that are punishable by terms of not more than six months' imprisonment. A summary courts martial consists of one officer, and the maximum punishment which it may impose is thirty days' imprisonment. Trials by courts martial will be held in open court except where the evidence may be of value to the enemy. All courts martial will be held within a reasonable distance of the scene of the crime and witnesses will receive a fee of \$2 a day as well as travelling expenses. It is understood that arrangements for the defence are made through the Judge Advocate's Department, and the accused may select his own advocate, military or civilian, or even, if he wishes, a British lawyer. The powers of the British police to enter premises or arrest or search, or take persons into custody are not affected by the Act. When a verdict is reached by a special or summary court, the record of the trial is submitted for review to the authority who appointed the court, and he will make the final disposition in each case. If the accused person is acquitted the appointing authority can take no further action, but if he is found guilty, his sentence may be reduced but not increased by the appointing authority, who may also order a retrial of a case if he discovers errors in the proceedings. The records of all courts martial general, after they are reviewed by the appointing authority, are again examined by a board of review consisting of three officers on the staff of General HEDRICK. Normally the final action with respect to verdicts of general courts martial will be taken by the board of review, but the more serious cases will also be reviewed by Lieut.-Gen. DWIGHT D. EISENHOWER, commanding general of the European theatre of operations. Examples are given to show that penalties in the American military code are no less severe and in many cases more severe than those imposed by British criminal courts, and it is pointed out that all these sentences may include forfeiture of pay and all but the sentences for drunkenness include dishonourable discharge. Persons found guilty will be imprisoned by the United States Army in places in the European theatre, but those who must serve terms of about five years or more will be sent back to penal institutions in the United States. Death sentences will be carried out in the European theatre of operations by hanging or shooting. Hanging is considered a more ignominious penalty, being reserved for such offences as murder, rape and spying. Shooting is reserved for purely military offences such as sleeping on post. This memorandum deserves the greatest publicity, as it emphasises a great deal that the American and British legal systems have in common, and very little that sets them apart.

War Damage Payments.

THAT there has been some misunderstanding as to the attitude of the War Damage Commission on the question of the measure of compensation which they think fit to make for war damage was made apparent in a question in the Commons on 6th August by Mr. LAWSON. The question related to a particular case of a man who, after suffering damage to his household effects through enemy action, had been asked by the War Damage Commission to sign a form stating that the amount payable was a specified sum. He said that no attempt was made to enter into a reasonable settlement with the householder when visited by the valuer, and no opportunity was afforded on the form for the claimant to express disagreement with the amount proposed as final settlement, and asked what remedy could be afforded. Captain WATERHOUSE replied on behalf of the President of the Board of Trade that he had called for a full report on the case. Mr. LAWSON then asked the President whether he was aware that the general practice

of those who administer the War Damage Act appeared to be to offer as final settlement not more than one-third of the amount claimed, as though this were a principle of law; and whether he would take steps to have a proper valuation agreed to between the valuer and the householder, or his representative. The reply was that the general practice was not as suggested in the question, and that the Inland Revenue valuers who assessed claims for damage to private chattels did so on the basis of the diminution in the value of the goods at the time of the damage, having regard to their condition prior to the damage, and to the price at which the goods could then be bought; and they were expressly instructed to make every effort to settle claims on broad lines by agreement with claimants. Where the local valuer could not arrive at such an agreed settlement, the case was referred to a higher authority. In reply to a further question Captain WATERHOUSE agreed that many of these claims had been most satisfactorily and speedily cleared up.

Blocked Accounts and Investment of Funds.

THE securities in which it is permitted to invest sums standing to the credit of blocked accounts for the benefit of persons resident outside the sterling area under Regulation 3E of the Defence (Finance) Regulations, 1939, were specified in the schedule to the Blocked Accounts (Authorised Investments) (No. 1) Order, 1942. In the August issue of *The Law Society's Gazette* it is stated that when an investment is made of money standing to the credit of a blocked account, it may be desired to obtain permission for the interest on the investment to be remitted outside the sterling area. The Council of The Law Society reminds members that not all the investments specified in the schedule referred to above come within s. 46 (1) of the Income Tax Act, 1918, under which interest on certain British Government securities is exempt from tax where the Commissioners of Inland Revenue are satisfied that the security is in the beneficial ownership of a person who is not ordinarily resident in the United Kingdom. The following list of "section 46 securities" has been prepared by the Council, and consists of investments included in the schedule referred to above:—

- 4% Funding Loan 1960-90
- 4% Victory Bonds
- 3½% War Loan
- 3% Defence Bonds (1st issue)
- 3% Defence Bonds (2nd issue)
- 3% War Loan 1955-59
- 2½% National War Bonds 1945-47
- 2½% National War Bonds 1946-48
- 3% Savings Bonds 1955-65
- 2½% National War Bonds 1949-51
- 3% Savings Bonds 1960-70.

Registration of New Clubs.

INCLUDED in an Order in Council amending and adding to the Defence Regulations (S.R. & O., 1942, No. 1543, 6th August) is a new Defence Regulation 55c, restricting the registration of new clubs. It provides that where application is made under the Licensing (Consolidation) Act, 1910, for the registration of a new club, there shall be included among the particulars which are required to be registered the names and addresses of the promoters of the club, the proprietor, if any, the person, if any, who is or will be the manager thereof, the persons who took part or will take part in the management of the club, the persons who have become or agreed to become members of the club, and any other persons who (whether because they have provided or are providing capital for the club or for any other reason) are financially interested in the success of the application, together with a statement of the nature and extent of their respective interests. These particulars must be sent by the clerk to whom the application is made to the chief officer of police who may within fourteen days send a notice of objection on any of the grounds set out in the regulation, i.e., redundancy, unsuitability of premises, inaccuracy or incompleteness of particulars or character or antecedents of persons mentioned in the particulars. This notice is served on the applicant, who may within four weeks appeal to the court for which the clerk to whom the application is sent acts. No objection on the ground of redundancy or unsuitability of premises may be made where the Minister of Labour or any of the authorities specified in reg. 49 of the Defence (General) Regulations, 1939, certifies that there is a genuine and substantial need for the club and that the premises and situation are suitable. Before actual registration inspections of the premises may be made on behalf of the police authorities.

Recent Decision.

In *France Fenwick Tyne Wear Co. Ltd. v. H.M. Procurator-General*, on 11th August, the Judicial Committee of the Privy Council (the LORD CHANCELLOR, LORD THANKERTON, LORD WRIGHT, LORD PORTER and MACKINNON, L.J.) in advising the allowing of an appeal from the Prize Court, held that a claim for salvage services rendered to a Danish ship before the invasion of Denmark by Germany on 9th April, could be enforced, although the Procurator-General on 12th April commenced proceedings in prize in respect of the vessel.

Procedure in 1941.

Review of the Year.

(Continued from p. 228.)

Payment into Court.

Where money has been paid into court and has not, within the requisite period, been taken out, the defendant cannot, as of right, withdraw the payment. He must ask the leave of the court for an order that he be at liberty to withdraw the payment. Leave will be given in special circumstances only, e.g., upon a change in the law (*Cumper v. Potheary* (1941), 2 All E.R. 516 (C.A.)).

The action was by an administrator to recover damages for negligent driving and for loss of expectation of life. The claim was also against a company of hauliers and, before defence, £1,062 was paid into court, ostensibly on behalf of both defendants but intended to be on behalf of P only. This matter was later put right against the second defendant and the action was later discontinued. P, in paying in, admitted negligence, but denied the damage. The notice was not in the prescribed form (under Ord. XXII, r. 1 (3)), but this irregularity the plaintiff had waived. Goddard, L.J. (who delivered the judgment of the Court of Appeal), in a careful and elaborate exposition, stated that the prescribed form (Appendix B, Form 3) should be strictly followed: liability should be denied in plain terms; any qualification as to admission should be dealt with in the pleadings (at p. 518). The plaintiff did not accept the sum of £1,062; in the middle of 1940 large sums were being awarded for loss of expectation of life; the deceased was a girl of twenty-two, and she had survived three days after the accident. In December, 1940, the House of Lords, in *Benham v. Gambling* (1941), 1 All E.R. 7, decided that damages for loss of expectation of life must be "scaled down very considerably." Accordingly the defendant took out a summons asking for the money to be repaid. The next day the plaintiff asked for leave to accept the money.

Payment into court, observed Goddard, L.J., depends upon statute or rules of court, now upon Ord. XXII. By r. 1, payment in may be made in satisfaction, and notice (in a prescribed form) must be given to the plaintiff, stating whether liability is admitted or denied. Payment into court is not a defence. No mention of the payment must be made in the defence, except in certain libel cases or where tender is pleaded. Within seven days the plaintiff may, by giving a prescribed notice, take the money out in satisfaction, whether liability is admitted or denied (r. 2 (1)), proceedings then being stayed (r. 2 (2)). If the plaintiff accepts the money within seven days the plaintiff may tax his costs unless the court orders otherwise; the action is then at an end (r. 2 (3)). If, within seven days, the plaintiff does not accept the money, the money must not be paid out except in satisfaction and under an order of the court, before, at, or after, the trial (r. 3).

When the seven days have expired the plaintiff cannot get the money unless he obtains an order; the court will not make an order unless it thinks it right to do so. There are no limits on the powers of the court, which is acting judicially, not ministerially; the court can refuse to allow the plaintiff to take out the money even if there was no fraud or mistake unknown, at the time of payment, to the defendant (at p. 520). The court has complete discretion to make or to refuse an order (cf. *Frazer and Haves, Ltd. v. Burns* (1934), 49 Ll. L.R. 216; and *Williams v. Boag* (1940), 1 All E.R. 246). In the latter case money had been paid in with an admission of liability. It was not accepted. The defendants then discovered facts which admittedly were a complete defence. They were allowed to amend and to get back the money paid in.

The court accordingly refused to allow the plaintiff to take out the money because, on the principle of *Benham v. Gambling*, it was most unlikely that the plaintiff would recover such a large sum. The defendant had applied to reduce to £350 the amount paid in; the master gave him leave to amend his notice of payment in accordingly. This amendment, the court held, should not have been allowed; it left £702 "simply in the air."

Goddard, L.J., stated the proper procedure where a defendant desires leave to withdraw or to reduce his payment in.

(1) If he wishes to *withdraw*, he should ask for an order that he be at liberty to *withdraw his payment in*, and that the sum in court should be paid out, or dealt with as the court direct (e.g., to remain in court as a security) (at p. 522).

(2) If he wishes to *reduce the payment*, he should ask for an order that he be at liberty to *withdraw the notice* and substitute a new notice containing the reduced amount, and for an order that the difference between the two sums be repaid to him, or dealt with as the court direct.

In the present case the court suggested that the defendant take steps to amend his defence and start again. No opinion was expressed whether, if an application were made, it should be granted.

"It must not be thought that a defendant who has paid a sum into court is entitled as of right to resile from that step. He must... show that there are good reasons for his application—for instance, the discovery of further evidence

which puts a wholly different complexion on the case... or a change in the legal outlook brought about by a new judicial decision, as in the present case, and there may be others. Having once put a valuation on the plaintiff's case, the defendant ought not to be allowed to alter it without good reason" (at p. 522).

The same rule applies if the plaintiff asks for the money to be paid out. The court must consider whether there is "a sufficient change of circumstance to make it just" to allow the defendant to withdraw or reduce his payment (at p. 523).

(To be continued.)

Our County Court Letter.

Excessive Drainage of Surface Water.

In a recent case at Kidderminster County Court (*Richards and Wife v. Griffin*) the claim was for £50 damages and an injunction to restrain the drainage of water on to the plaintiff's land. The plaintiffs' case was that water, which would ordinarily have seeped or percolated on to their land, had been drained artificially and concentrated into two outlets. This was produced by the construction of a 3-inch land drain in 1939, with the result that the water came on to the plaintiffs' land in greater volume. Damage was thereby caused, and the land could not be put to its proper use. A breach, which allowed water from a pool on the defendant's land to flow over the plaintiffs' land, had been lowered, and the water thus overflowed. Formerly the water had only drained out of the pool when it overflowed in the winter, but the holding capacity of the pool had been reduced by the breach. The 3-inch pipe, taking surface water from five acres, would discharge 77,628 gallons in twenty-four hours, running full. The lowering of the breach by 18 inches would increase the output by 11,812 gallons. The pool contained about 17,500 gallons in April, 1941. In 1923 there was no breach in the back of the pool, but in February, 1941, an adjoining bridge path was flooded beyond a walking depth. The defendant's case was that he bought the land in 1938, when it was in a bad state through lack of drainage, and two outlet pipes in the pool were choked. If those original pipes had functioned, the present breach in the bank would not have lowered the water level. There was a ditch for 150 feet from the pool to the bridge road, along which the water ran. There was no other way of draining the defendant's land, and the plaintiffs' land had not been rendered wetter. If the ditch on the plaintiffs' land had been cleaned out no trouble need have arisen. His Honour Judge Roope Reeve, K.C., observed that the defendant had increased the productivity of his land, but, in so doing, had increased the burden on the plaintiffs' land. The claim to an injunction was not pressed, and judgment was given for the plaintiffs for £25 and costs.

Decisions under the Workmen's Compensation Acts.

Compensation for Smallholder.

In *Corner v. Eyton*, recently heard at Wellington County Court, a special case was submitted by an arbitrator in which the following facts were stated to have been proved or admitted: The applicant went into possession, as tenant, of Long Lane Farm on the 25th March, 1932; two cottages, included in the holding, were sub-let by the applicant to two persons not employed on the holding; notice to quit, expiring on the 25th March, 1941, was served on the applicant, who duly vacated the holding; he failed to deliver possession, however, of the two cottages, as the sub-tenants refused to quit; the new tenant had taken ejectment proceedings and had obtained possession of one cottage on the 9th June, 1941; the other sub-tenant was still in possession. The question of law was whether the failure of the applicant to give to the respondent possession of the two cottages on the 25th March, 1941, disentitled the applicant to obtain compensation for disturbance under the Agricultural Holdings Act, 1923, s. 12. The applicant's case was that he was not disentitled by the mere fact that the two cottages were not made immediately available to the respondent on the expiration of the notice to quit. The respondent's case was that the sub-letting had been wrongful and the applicant had not done all in his power to eject his sub-tenants before the expiry of the notice to quit. His Honour Judge Samuel, K.C., held that the applicant had done all he could to eject his sub-tenants and was not disentitled to compensation. Costs (including those of the arbitrator) were awarded to the applicant, except the costs of the first day's hearing.

Obituary.

MR. W. LAMBERT.

Mr. William Lambert, solicitor, of Messrs. Lamberts, solicitors, of Malvern, Woms, died recently, aged ninety-two. He was admitted in 1875.

MR. H. F. POYNTON.

Mr. Herbert Francis Poynton, solicitor, of Bristol, died on Wednesday, 29th July, aged eighty-two. He was admitted in 1881.

A Conveyancer's Diary.

Value Payments and New Trustees.

I HAVE recently had occasion to consider a case in which land was settled on trust for sale and a new trustee had to be appointed. Part of the land had had buildings on it, but they had been completely demolished by enemy action. This portion of the trust estate, therefore, now consists of empty sites and rights to receive value payments, at some future date, under the War Damage Act, 1941. On the appointment of a new trustee for sale the legal estates in the sites naturally would pass to him by virtue of the declaration implied by s. 40 of the Trustee Act. The question was how the title to the value payments should be dealt with. Obviously it is not desirable that these payments, which primarily accrue to the persons entitled when the damage occurs, should, in the case of trust land, be paid to any one except the persons who are trustees when the money is actually paid.

First, these payments are not annexed to the land so as to pass with it into whosoever hands it may come; they are not a sort of incorporeal hereditament, but an item of personality. They are sums of money payable by virtue of an enactment, and, save as otherwise expressly provided, their legal nature is that of a statutory debt *solvendum in futuro*. I do not think these propositions are open to doubt. Had the law been otherwise, it would have been otiose to provide, as does s. 46 (2) of the War Damage Act, that a devise of land is to carry with it the right to receive any payments which become due to the testator in respect of such land. There are one or two other occasions on which the Act expressly carries the payment to an assignee of the land, but the appointment of a new trustee is not one of them.

Second, I have no doubt but that the vesting declaration implied by Trustee Act, s. 40, does carry these rights to the new and continuing trustees. I must confess that I generally think of s. 40 (1) as covering only realty; that is, indeed, a fairly common superstition. The reason presumably is that the average trust comprises some land, some stocks and shares and some mortgage securities. As stock or shares transferable in the books of some body and mortgage securities are both excluded from s. 40 (1) by virtue of subs. (4), the vesting declaration only functions, in the normal case, in respect of the land. But actually s. 40 (1) covers not only "any estate or interest in land subject to the trust," but also any estate or interest "in any chattel so subject, or the right to recover or receive any debt or other thing in action so subject," apart from the exceptions set out later in s. 40. Thus, bearer shares are caught by an implied vesting declaration, as being "things in action" and not registered or inscribed. Likewise, the right to a value payment is a "thing in action" and is vested by s. 40 (1), apart from any contrary provision of the War Damage Act.

Third, it is necessary to consider s. 9 (7) of that Act, which provides that the right to receive any payment or share of a payment under Pt. I of the Act in respect of war damage "shall be transmissible by assignment or by operation of law as a personal right." So far so good. But "an assignment, . . . whether absolutely or by way of charge, other than an assignment which does not affect any beneficial interest in the payment . . . shall be of no effect until it has been approved in writing by the Commission." The final position thus is that the assignment under Trustee Act, s. 40, of the right to receive a value payment is not suspended pending the written approval of the Commission because, and only because, no beneficial interest is affected by it.

It was thought desirable in the particular case where the point arose to make sure that the above reasoning was accepted by the Commission, and they were asked for their views. They have replied that value payments will be made to the persons who are the trustees at the time when the payment is made, provided that they produce to the Commission the document appointing the new trustees. It follows from that statement (a) that the Commission accept the view that war damage payments are covered by Trustee Act, s. 40 (1), and (b) that they do not regard their consent as necessary to the efficacy of the vesting under that subsection. That is a very satisfactory and convenient result. In practice it will be desirable, since the payments are items of personality and not part of the realty in respect of which they arise, to include in the deed of appointment of new trustees a separate schedule or part of a schedule giving a list of the payments claimed, so that the title may hereafter be clear and complete.

Advertisements for Creditors.

I have had a certain number of letters about my recent plea for arrangements to be made which will render advertisements for creditors less wasteful of paper. Let it first be said that I do not feel very hopeful that much can be done unless and until the form provided in the appendix to the Rules of the Supreme Court is made simpler. One correspondent points out that under the present system there almost always has to be an advertisement in the local paper and that the full form of advertisement is necessary there as such papers do not have many advertisements.

That being so, he observes that it is less trouble in the office to do all the advertisements in exactly the same form, using carbon paper. I agree; but this is really a further reason for the rules to be altered so that the advertisements in the local papers can be simpler.

Another correspondent regrets that I do not mention *Re Letherbrow* and *Re Holden*, which are both cases in *Weekly Notes* of 1935. As a matter of fact, I dealt with *Re Letherbrow* in the "Diary" of 5th March, 1938, but as that is now a long time ago, it is worth further mention. The point of *Re Letherbrow* is that the court was there asked to order, and did order, an inquiry as to what advertisements the court would have ordered in an administration action, so that the trustees might feel secure that advertisements made by them under Trustee Act, s. 27, were the right ones. *Re Holden* was another case of much the same sort. The consequence is that a more or less inexpensive way is provided of satisfying trustees that they are in fact issuing the proper advertisements despite the distinctly awkward position which the wording of s. 27 creates. One hopes, however, that in any but a particularly difficult case the trustees will accept their solicitor's advice as to what advertisements to insert and will not incur the expense of such an application.

There, for the moment, the matter must rest until those whose duty it is to secure economy of paper interest themselves in those advertisements. One solicitor has reproached me for saying that "acres" of paper are wasted by the present system: he says that "square miles" would have been a more accurate term.

Estate Contracts.

Another correspondent raises a fresh matter of some general interest. He acts for a client who contracted to buy land in Middlesex. The contract was by correspondence, and the purchaser and his solicitor do not know whether the land is registered land or not. The vendor started to make difficulties about going on with the sale and threatened to sell to a third party. Naturally, my correspondent hastened to register an estate contract so as to protect his client, the purchaser. It then occurred to him that land in Middlesex might well be registered land so that registration under the Land Charges Act, 1925, would be ineffective: s. 23 of that Act. He took the double course of applying for registration of an estate contract under the Land Charges Act and also of drawing a caution under the Land Registration Act, making the necessary statutory declaration, and writing to the Land Registry asking that the land register should be searched and that the caution should be registered if the land was registered land. He asks whether this procedure (which, of course, increases the trouble and expense) is in our view necessary. I am sorry to say that my researches have not disclosed any other way of dealing with the matter, as the Land Charges Act, s. 23, is a complete bar. I agree with my correspondent that the position is unsatisfactory. It is, indeed, more so than his case shows; obviously, the point arises in Middlesex or London, where the land may very well be registered. But a good deal of land in all parts of the country has been voluntarily registered, so that, unless the purchaser has seen the title, the point may arise anywhere. And so long as we have the system under which registered and unregistered land exist side by side the difficulty will remain. In the meantime others may, perhaps, profit from my correspondent's experience.

Landlord and Tenant Notebook.

Head Rent collected from Sub-tenant.

READERS of a historical turn of mind will have seen in *Wallrock v. Equity and Law Life Assurance Society* (1942), 86 SOL. J. 224, a remote consequence of the passing of the Sale of Distress Act, 1689. For before that enactment was passed, distress being merely a right to seize and retain articles found on the demised premises, landlords had little to gain by distraining on the property of third parties. Nearly three centuries later, after one Charles Dickens had ridiculed and otherwise criticised the operation of this statute and Blackburn, J., delivering judgment in *Lyons v. Elliott* (1876), 1 Q.B.D. 210, had called it "a very harsh and unjust law," Parliament passed the Lodgers' Goods Protection Act, 1871. This was practically superseded by the Law of Distress Amendment Act, 1908.

But while conferring protection on, *inter alia*, sub-tenants, the Legislature manifested some sympathy for the landlord who, receiving nothing himself, experienced the annoyance of watching the defaulter collect regular payments, for the use of the same property, from other parties. Hence, while s. 1 gives a sub-tenant a right, when his goods are distrained, to free them by executing a declaration, s. 6 provides: "In cases where the rent of the immediate tenant of the superior landlord is in arrear it shall be lawful for such superior landlord to serve upon any under tenant or lodger a notice . . . stating the amount of such arrears of rent and requiring all future payments of rent . . . to be made direct to the superior landlord . . . and such notice shall operate to transfer to the superior landlord the right to recover, receive and give a discharge for such rent."

The question raised by *Wallrock v. Equity and Law Life Assurance Society* (1942), 86 SOL. J. 224, was whether such a notice might be given, and payment received accordingly, without leave of court under the Courts (Emergency Powers) Act, 1939. The plaintiff, mesne tenant of premises let on a ninety-year lease reserving an annual rent of £1,200, had sub-let part of them at £1,600 a year. On his defaulting, an order for possession was obtained by the now defendants, his landlords, presumably by virtue of a forfeiture clause; leave to proceed was suspended on condition that an amount was paid within seven days, and the summons was to be restored at the end of six months. Just before the six months expired the defendants served the sub-tenants with the notice complained of, the plaintiff then owing £438 18s. 3d. rent which had accrued due during the period mentioned. The sub-tenants paid £400. Thereupon the plaintiff sued for a declaration and an injunction; the latter was granted, and the defendants appealed.

Two arguments were advanced on behalf of the plaintiff. It was first contended that s. 1 (2) (a) (i) of the Courts (Emergency Powers) Act, 1939, had been infringed, in that the defendants had exercised, without leave, a remedy "by way of the levying of distress." This was somewhat curtly rejected by the Court of Appeal, who declined to recognise the "special right" conferred by s. 6 of the Law of Distress (Amendment) Act, 1908, as falling within that description.

It may well be that this contention was not put forward very hopefully, for when one considers the Law of Distress (Amendment) Act as a whole it is clear that the section, which makes a concession to the landlord who has been deprived of a common law remedy and a statutory (the 1689) right, enacts substantive rather than adjective law. It transfers certain rights—and with them, no doubt, the appropriate remedies: which means, in effect, that the superior landlord could distrain on the under-tenant's goods after giving the notice, but then would be the time for an application for the now necessary leave of court.

The several sub-paragraphs of s. 1 (2) (a) of the Courts (Emergency Powers) Act, 1939, specify named remedies which, examination will show, are in the nature of "self-help" remedies: taking possession; appointing a receiver; re-entry on land; realising a security; forfeiting a deposit; serving a demand on a company with a view to winding-up proceedings. It would be too much to say that the use of force is sanctioned by the law in each of these cases; but this is a feature common to many of them.

What Lord Greene, M.R., called a more attractive argument was, in fact, based on s. 1 (2) (a) (ii), prohibiting (save with leave) the exercise of the remedy of "the taking of possession of any property." The word "possession," as we all know, fairly invites argument; and even when the Legislature qualifies it—as was done, for instance, by inserting the word "actual" in the case of the Rent and Mortgage Interest Restrictions Act, 1923, s. 2 (3)—differences of opinion may occur which are not readily resolved. In this case the contention was as follows: the giving of the notice under the Law of Distress (Amendment) Act, 1908, s. 6, was the taking of possession of property, for it expressly conferred the right to recover and receive the rent of property. In support it was urged that the self-same sub-paragraph proceeded "... the appointment of a receiver of any property"—an operation it may be observed which does not ever call for any violence. However, the Court of Appeal decided that the more liberal construction should not be applied in this case; that in the absence of a clear context "possession" meant "physical possession"; for a more appropriate word would have been used to cover the statutory assignment of a chose in action.

Notes and News.

Honours and Appointments.

Mr. J. H. G. McDougall, formerly Puisne Judge, Tanganyika Territory, has been appointed Chief Justice of Gibraltar on the resignation of Mr. M. C. Greene. Mr. McDougall was called by the Inner Temple in 1921.

Notes.

Councillor H. G. Greenwood has been designated Mayor of Ealing for the year 1942 to 1943. He is a solicitor practising at Ealing and was admitted in 1922. He has been Chairman of the Borough of Ealing Civil Defence Committee since the outbreak of war.

Wills and Bequests.

Mr. Charles E. Pinfold, barrister, of Bournemouth, left £28,925, with net personality £25,460.

Mr. Henry Newton Raphael, solicitor, of Cookstown, Co. Tyrone, left estate in England and Northern Ireland £46,881.

Mr. William Theodore Melville Robertson, retired solicitor, of Shurdington, Glos., left £22,263, with net personality £22,147.

Mr. Alexander Thomas Miller, K.C., left £20,286, with net personality £12,967.

Mr. Arthur Thorne, solicitor, of Southend-on-Sea and Combe Martin, left £98,897, with net personality £86,814.

To-day and Yesterday.

LEGAL CALENDAR.

17 August.—Sir Charles Wetherell, K.C., Recorder of Bristol and active politician, died at Preston Hall, in Kent, on the 17th August, 1846, as the result of a driving accident a week before. He had been to Smarden to view an estate he was thinking of purchasing and had slept at the "Star" in Maidstone. Next morning he ordered an open fly, to proceed to Rochester. On the way the mare got her tail over the reins and on the driver loosening them to disentangle them, she naturally increased her pace slightly. This alarmed Sir Charles, who caught hold of the off rein causing the horse to start and draw the carriage over a heap of stones, which upset it. He fell on the side of his head and only once partially recovered consciousness before he died. He had narrowly escaped a violent death during the great Bristol riots of 1831, when the mob thought it their duty to kill their Recorder because he happened to be a Tory.

18 August.—Eleanor Beare was a well-known bad character at Derby, and in August, 1732, she was indicted for trying to persuade a man to kill his wife and getting him poison and also for causing women to miscarry. She was convicted and condemned to three years' imprisonment and to stand in the pillory. On the 18th August she was so exposed in the market place guarded by the sheriff's officers, but "the populace, to show their resentment of the horrible crimes wherewith she had been charged and the little remorse she had shown since her commitment, gave her no quarter, but threw such quantities of eggs, turnips, etc., that it was thought she would hardly have escaped with her life. She disengaged herself from the pillory before the time of her standing was expired and jumped among the crowd whence she was with difficulty carried back to prison."

19 August.—John Philipps, a barrister of the Middle Temple, died at Carmarthen, in his fifty-sixth year, on the 19th August, 1803. He was at first a dissenting minister at Hinckley, in Leicestershire, but subsequently decided to go to the Bar. He worked hard and obtained some success, finally getting his great chance when he was engaged as counsel on the occasion of the scrutiny in the Westminster election fought so vigorously by Charles James Fox. Thereafter his thorough knowledge of election law made every candidate in difficulties anxious to employ him. But his heart was not really in the law, and when he had acquired an honourable independence, he retired to the country to study agriculture to which he rendered outstanding services.

20 August.—On the 20th August, 1660, Pepys waited on Lord Clarendon at Worcester House, in the Strand. "Here I stayed and saw my Lord Chancellor come into his great hall, where wonderful how much company there to expect him. Before he would begin any business he took my papers of the state of the debts of the fleet and there viewed them before all the people and did give me his advice privately how to order things to get as much money as we can of the Parliament." Lord Clarendon was then leasing this house from the Marquis of Worcester at £500 a year. Subsequently, he moved to the great palace which he built for himself in Piccadilly opposite the top of St. James's Street.

21 August.—Writing of the Carlisle Assizes, on the 21st August, 1778, Boswell described how it was the custom for the High Sheriff to ride seven miles out of the town to meet the judges: "He is accompanied by as many gentlemen as choose to attend him. Formerly and till within these few years he used to go to the extremity of the county. The Sheriff has as many servants of his own as he chooses to bring and his friends send every one a servant. These used formerly to be dressed in the Sheriff's own livery so that there were new liveries every year which was a great expense. But now one livery serves year after year till the clothes are worn out. . . . This Sheriff was not a popular man, so was but poorly attended. He had not twenty javelin men and few gentlemen."

22 August.—Thomas Hunter, the son of a rich farmer, took his degree at the University of St. Andrew's and then turned to the church to make his career. While waiting for a benefice he went into the family of Mr. Gordon, an eminent Edinburgh merchant, as tutor to his two small boys, in which capacity he gave the utmost satisfaction. Unfortunately, however, he became too fond of the maid who attended Mrs. Gordon and her little girl. One day while the parents were out they met in his room but neglected to lock the door and the children going in "found them in such a situation as could not admit of any doubt of the nature of their intercourse." That night at supper the eldest boy let out the secret but, though the girl was discharged, Hunter was kept in the household. From that time he conceived a deadly hatred for the children, and one day while taking the boys for their mid-day walk in the fields near the city he cut their throats with his penknife. He was tried for the murder and executed on the 22nd August, 1700, his hand being first struck off and fixed to the gibbet with the knife.

23 August.—On the 23rd August, 1775, at the assizes at Wells, an action against the returning officer for the Taunton election began and lasted till four next morning. An hour later the jury delivered a verdict for the defendant at the judge's lodging.

Notes of Cases.

CHANCERY DIVISION.

In re Lindop; Lee-Barber v. Reynolds.

Bennett, J. 22nd May, 1942.

Administration—Commorientes—Husband and wife killed by same bomb—Wife the younger—Presumption of survivorship—Law of Property Act, 1925 (15 Geo. 5. c. 20), s. 184.
Adjourned summons.

The husband had by his will made in 1928 given all his residuary estate to his wife. His wife by her will made in 1931 gave all her estate to her mother, R, and, in the event of R predeceasing her, to her brothers and sisters. On the night of the 19th May, 1941, the husband and wife were both killed as the result of a bomb which destroyed the house where they were living. There was evidence from a doctor and a member of the rescue squad who found their bodies lying together, that the husband and wife died instantaneously and it was also stated simultaneously. The husband was nine years older than his wife. By this summons, to which the beneficiaries under the wife's will and the husband's next-of-kin were defendants, the personal representative of the husband asked, in effect, whether the presumption laid down in s. 184 of the Law of Property Act, 1925, applied. Section 184 provides: "In all cases where after the commencement of this Act, two or more persons have died in circumstances rendering it uncertain which of them survived the other or others, such deaths shall (subject to any order of the court), for all purposes affecting the title to property, be presumed to have occurred in order of seniority, and accordingly the younger shall be deemed to have survived the elder."

BENNETT, J., said that the meaning of s. 184 was not open to serious doubt. Once it had been proved that two or more persons had died in circumstances rendering it uncertain which of them survived the other, the presumption of fact arose that they died in order of seniority. The words "subject to any order of the court" in the section made it clear that the statutory presumption was rebuttable. The effect of these words was to enable the court to receive evidence to displace the presumption. They did not give the court power to disregard the presumption, if the court came to the conclusion that it would be unfair or unjust to act upon it. In the present case evidence was given that the husband and wife died at exactly the same moment of time. Taking all the evidence into account and bearing in mind the infinite divisibility of time, he had come to the conclusion that the next-of-kin of the husband had not discharged the burden of proving that the husband and wife died simultaneously. The provisions of the section therefore operated and the husband must be presumed to have died some brief moment before his wife, with the result that she became entitled to his residuary estate, which accordingly was disposed of by her will.

COUNSEL: A. C. Nesbitt; Mulligan; Wilfrid Hunt.

SOLICITORS: Church, Adams, Tatham & Co., for G. J. Lee-Barber, Torquay; Stooke-Vaughan, Webster, Webster & Co., for Alfred Burrow, Cullompton.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

In re Rudd; Royal Exchange Assurance v. Ballantine.

Morton, J. 2nd July, 1942.

Administration—Retainer—Debt due to executor as trustee—"Debts owing to the personal representative in his own right"—Administration of Estates Act, 1925 (15 Geo. 5. c. 23), s. 34 (2).
Adjourned summons.

The testatrix died on the 7th June, 1940, and her will and codicil were proved by the plaintiffs. The testatrix at her death owed substantial sums, including a sum of £4,000 to the plaintiffs and the first defendant, which sum was secured by mortgage on freehold properties belonging to the testatrix. The plaintiffs and the first defendant held this mortgage debt as trustees of a settlement and had no beneficial interest in it. It was uncertain whether the estate of the testatrix would prove sufficient to pay all her debts in full. By this summons the plaintiffs asked whether, as personal representatives of the testatrix, they were entitled to exercise a right of preference in respect of the sum of £4,000 by paying such sum in priority to other debts of equal standing. The second defendant to the summons was a creditor representing all other creditors. The Administration of Estates Act, 1925, s. 34 (2), provides: "The right of retainer of a personal representative and his right to prefer creditors may be exercised in respect of all assets of the deceased, but the right of retainer shall only apply to debts owing to the personal representative in his own right whether solely or jointly with another person. Subject as aforesaid, nothing in this Act affects the right of retainer of a personal representative, or his right to prefer creditors."

MORTON, J., said that if the plaintiffs exercised the right mentioned in the summons they would be exercising a right of retainer and not of preference (*In re Hubback*, 29 Ch. D. 934). That this was the true view was supported by s. 34 (2) of the Act. The question whether the plaintiffs had the right which they claimed turned on the meaning to be attached to the words "owing to the personal representative in his own right whether solely or jointly with another person." It was contended that "in his own right" did not imply that the personal representative must be the beneficial owner of the debt, but merely that it must not be owing to him in a representative capacity, such as that of trustee in bankruptcy or liquidator. It was pointed out that in *Sutton v. English and Colonial Produce Co.* [1902] 2 Ch. 502, and other cases, the words "in his own right" had not been construed as meaning beneficially. It was, however, pointed out in that case that these words might have different meanings in different contexts. He had come to the conclusion on the true construction of s. 34 (2), and having regard to the context, that those words meant

beneficially. The subsection first said that the right of retainer might be exercised in respect of "all assets of the deceased." This part of the subsection gave to the personal representative an advantage, as before the section came into operation he could only exercise his right in respect of legal assets. Then came in the subsection the word "but," and the antithesis would seem apt to introduce something which, instead of giving an advantage, imposed a disadvantage. On this view the latter part of the subsection took away from the personal representative the right which he formerly possessed of retaining in respect of debts which were owing to him as trustee. He would accordingly answer the question raised in the negative.

COUNSEL: L. R. Norris; A. C. Nesbitt; H. Hillaby.

SOLICITORS: Peacock & Goddard, for Mooring Aldridge & Haydon, Bournemouth.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

War Legislation.

STATUTORY RULES AND ORDERS, 1942.

- No. 1608. **Alien.** Restriction. Direction, August 6, under Art. 22 (2) of the Aliens Order, 1920, as subsequently amended.
- No. 1575. **Aliens** (No. 2) Order in Council, August 6.
- E.P. 1560. **Apparel and Textiles.** Fur Apparel (No. 2) Directions, August 1.
- E.P. 1235. **Check Trading** (Control) Order, August 4.
- E.P. 1236. **Check Trading** Direction, August 4.
- No. 1533. **Customs.** Export of Goods (Control) (No. 32) Order, August 4.
- E.P. 1545. **Defence** (Armed Forces) Regulations, 1939. Order in Council, August 6, substituting a new regulation for regulation 6 and amending regulation 12.
- E.P. 1549. **Defence** (Burial, Inquests and Registration of Deaths) Regulations, 1942. Order in Council, August 6, amending regulation 2.
- E.P. 1548. **Defence** (Cinematograph Quotas) Regulations, 1940. Order in Council, August 6, adding regulation 8.
- E.P. 1544. **Defence** (General) Regulations, 1939. Order in Council, August 6, adding regulation 29BB.
- E.P. 1543. **Defence** (General) Regulations, 1939. Order in Council, August 6, amending regulations 58A, 58AD and 103, and adding regulations 46AA and 55C.
- E.P. 1574. **Defence** (General) Regulations (Isle of Man), 1939. Order in Council, August 6, adding regulation 79D.
- E.P. 1547. **Defence** (Patents, Trade Marks, etc.) Regulations, 1941. Order in Council, August 6, amending regulation 8, and adding regulation 8A.
- E.P. 1546. **Defence** (Women's Forces) Regulations, 1941. Order in Council, August 6, adding regulation 7A and amending regulation 8.
- E.P. 1572. **Emergency Powers** (Colonial Defence) (Amendment) Order in Council, August 6.
- E.P. 1542. **Emergency Powers** (Defence) Act, 1939, as amended by subsequent enactments. Order in Council, August 6.
- E.P. 1535. **Emergency Powers** (Defence) Road Vehicles and Drivers Order, July 28.
- E.P. 1573. **Emergency Powers** (Straits Settlement Defence) Order in Council, August 6.
- E.P. 1594. **Essential Work** (General Provisions) (No. 2) Order, August 6.
- E.P. 1589. **Food Transport** Order, 1941. Directions, August 6.
- No. 1530. **Goods and Services** (Price Control). Furniture (Maximum Prices, Maximum Charges and Records) Order, August 3.
- No. 1531. **Goods and Services** (Price Control). Second-hand Goods (Maximum Prices and Records) (No. 2) Order, August 3.
- No. 1601. **Housing**, England. Housing Acts (Review of Contributions) Order, August 5.
- No. 1602/S.44. **Housing** (Scotland) Acts (Continuance of Contributions) Order, July 27.
- E.P. 1510. **Limitation of Supplies** (Miscellaneous) (No. 16) Order, July 31.
- E.P. 1512. **Limitation of Supplies** (Toilet Preparations) (No. 4) Order, July 31.
- E.P. 1521. **Making of Civilian Clothing** (Restrictions) (No. 12) Order, August 1.
- E.P. 1541. **Making of Civilian Clothing** (Restrictions) (No. 13) Order, July 31.
- E.P. 1451. **Miscellaneous Goods** (Prohibition of Manufacture and Supply) Order, July 31.
- E.P. 1527. **Motor Vehicles** (Restriction of Use) Order, July 30.
- No. 1571. **National Service** (Egypt) Order in Council, August 6.
- No. 1447. **National Service.** Order in Council, July 23, approving proclamation directing that certain British subjects shall become liable for service.
- E.P. 1587. **Rationing** (Personal Points) Order, 1942. Amendment Order, August 6.
- No. 1588. **Supplementary Pensions** (Determination of Need and Assessment of Needs) (Amendment) Regulations, July 31.
- No. 1593. **Unemployment Assistance** (Determination of Need and Assessment of Needs) (Amendment) Regulations, July 31.
- No. 1612. **Unemployment Insurance** (Banking Industry Special Scheme) (Amendment) Order, July 22.
- No. 1613. **Unemployment Insurance** (Insurance Industry Special Scheme) (Amendment) Order, July 22.
- No. 1576. **U.S.A.** (Visiting Forces) (Colonies, etc.) Order in Council August 6.

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